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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

On Petition for Writ of Certiorari from the Court of Appeals of South Carolina
Unpublished Opinion No. 2025-UP-416 (S.C. Ct. App. Filed Dec. 10, 2025)

TranSystems Corporation,

Petitioner,

v.

Flatiron Constructors, Inc.,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

QUESTIONS PRESENTED..... 1

INTRODUCTION 1

STATEMENT OF RELEVANT FACTS 3

ARGUMENT 8

 A. TSC’s Petition Should Be Denied Because The Court of Appeals Properly Applied Settled
 South Carolina Law..... 9

 1. *Tommy L. Griffin I* established that the existence of a special relationship is
 determined by an analysis of the facts and circumstances of each case..... 10

 2. The Court of Appeals properly applied the facts and circumstances test and summary
 judgment standard to find a genuine issue of fact material as to whether there existed a
 special relationship between TSC and Flatiron. 11

 B. There Is No Novel Issue of Law Under Rule 242(B)(1)...... 13

 1. TSC’s reliance on *Eastern Steel* is fatally flawed and cannot be relied upon to grant
 certiorari. 14

 2. The Rules of Professional Conduct do not preclude the creation of a duty 16

 3. Flatiron is not TSC’s adversary..... 17

 4. TSC’s attorney-client analogy fails..... 19

 C. There Is No Conflict With Prior Decisions of This Court Under Rule 242(B)(3). 21

 1. The Court of Appeals did not hold that duty is a question of fact. 22

 2. South Carolina law requires a factual analysis of the relationship between the Parties
 to determine the nature of their relationship 22

 3. TSC’s conduct, not its contract, determines the existence of a special relationship.... 23

CONCLUSION..... 25

QUESTIONS PRESENTED

1. DID THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY APPLY THE SUMMARY JUDGMENT STANDARD BY IDENTIFYING GENUINE ISSUES OF MATERIAL FACT REGARDING THE EXISTENCE OF A SPECIAL RELATIONSHIP, THEREBY PRECLUDING SUMMARY JUDGMENT AND WARRANTING REMAND FOR TRIAL?
2. SHOULD THE SUPREME COURT DENY CERTIORARI WHERE THE APPELLATE COURT’S DECISION ALIGNS WITH SOUTH CAROLINA PRECEDENT REQUIRING FACT-BASED DETERMINATIONS OF SPECIAL RELATIONSHIPS, AND THUS, DUTY, AND WHERE NO NOVEL LEGAL ISSUE OR CONFLICT WITH EXISTING LAW IS PRESENTED?

INTRODUCTION

Rule 242(b), SCACR, makes clear that a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons such as novel questions of law, a dissent below, or a conflict with a prior decision of this Court. This case presents none of these circumstances. Certiorari review is not an opportunity for a litigant merely displeased with the legal conclusion of the Court of Appeals to seek an additional review from this Court in the hopes of obtaining an outcome more to its liking.

Flatiron Constructors, Inc. (“Flatiron”) brought a professional negligence claim against TranSystems Corporation (“TSC”), the engineering firm that supervised and inspected the construction of a \$97 million bridge and roadway project in Horry County. The Court of Appeals—in a unanimous, unpublished, non-precedential per curiam opinion—reversed the trial court’s grant of summary judgment in TSC’s favor and remanded for the trial court to apply the facts-and-circumstances test established by this Court in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995) (“Tommy L. Griffin I”), and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C. 426, 544 S.E.2d 838 (2001). The Court of Appeals did not rule that TSC owes a duty to Flatiron as a matter

of law. It held only that genuine issues of material fact exist regarding whether a special relationship between TSC and Flatiron gives rise to such a duty, and that those issues must be resolved through further factual development.

None of TSC's varied arguments disturbs the reality that: (1) South Carolina has long-recognized a duty of care owed by professional engineers to contractors when a special relationship is established; (2) whether a special relationship exists is a question of fact; (3) in this case there are numerous facts in the record for the trial court to weigh on remand concerning the parties' relationship; and (4) the Court of Appeals properly remanded for consideration of those facts.

Far from creating new law, the decision below adheres to *Tommy L Griffin I's* guidance and respects the distinction between legal standards (which are applied de novo) and fact-driven applications (which are not resolved at summary judgment when material disputes exist). Whereas this case is merely a denial of summary judgment based upon the basic standards set forth in Rule 56, SCRPC, no "special and important reasons" justify granting TSC's Petition. TSC's persistent dissatisfaction with settled South Carolina law and its efforts to create bright-line exceptions to immunize itself from liability thereunder are insufficient grounds for further appellate review.

TSC's petition reduces to a disagreement with the appellate court's application of settled standards to a particular record. That is not a valid basis for certiorari. Review by this Court would not clarify the law; it would simply invite this Court to weigh facts and inferences, functions that are outside the proper scope of extraordinary review. Denial, however, will promote judicial economy and procedural regularity. Permitting the trial court to apply *Tommy L. Griffin I* and *Cullum* on a complete factual record once discovery is completed will produce a final judgment subject to ordinary appellate review if necessary. Intervention at this point would fragment

proceedings and risk advisory guidance untethered to concrete findings. The prudent course is to deny the writ and allow the case to proceed.

Critically, the decision below is an unpublished per curiam opinion that, by its own terms, “has no precedential value” and “should not be cited or relied on as precedent in any proceeding except as provided by Rule 268(d)(2), SCACR.” (*See* Court of Appeals’ December 10, 2025 Opinion (hereinafter, “Op.”)). TSC’s warnings of “pervasive consequences for construction contracts statewide” (Pet. 2) are directed at an imagined precedential effect of this opinion in an effort to garner yet another bite at the apple. The Court of Appeals’ decision returns this case to the trial court for the factual development that should have been completed before summary judgment was granted. This case is simply not “special and important” as contemplated by Rule 242.

STATEMENT OF RELEVANT FACTS

This case involves the construction of the Carolina Bays Parkway (the “Project”) in Horry County—a 7.45-mile extension to South Carolina State Highway 31, including a 3,633-foot main bridge over the Intracoastal Waterway, several minor bridges, and associated roadwork. (R. p. 314). As part of an Intergovernmental Agreement among Horry County, SCDOT, and the South Carolina Transportation Infrastructure Bank, SCDOT provided Project oversight, but construction and engineering services were “to be obtained from third-party consultants or contractors by or on behalf of the County.” (R. p. 781). To that end, Horry County (“the County”) contracted with TSC on December 15, 2011 (“TSC Contract”), to provide construction management, engineering, inspection, sampling, testing, and survey verifications to determine the contractor’s compliance with the contract documents, sometimes referred to as “CEI” or “CEIT” services. (R. pp. 806–832). Under its contract with the County, TSC “assume[d] full, complete and conclusive liability

for all discrepancies, errors or omissions found at any time in the plans or specifications.” (R. p. 820).

Nearly two years later, SCDOT, on behalf of Horry County, awarded the construction contract to Flatiron for \$97,868,087 (“Construction Contract”). (R. p. 683). On December 6, 2013, Flatiron entered into the Construction Contract with Horry County. (R. p. 684). The Construction Contract’s substantial completion date was approximately three years and three months after the Notice to Proceed. (R. p. 329). Despite Flatiron’s efforts, TSC adversely impacted the Project, and substantial completion was not achieved until 2019, five years after work began. (R. p. 936).

TSC’s Role on the Project

Under its Scope of Services, TSC was “responsible for the day-to-day operation and administration of the project.” (R. p. 248). TSC was SCDOT’s on-site representative for construction engineering and inspection services and managed communications between SCDOT and Flatiron. (R. pp. 917). TSC provided contract administration services, including handling Flatiron’s submittals, Requests for Information, schedule updates, change order requests, verification and approval of contractor pay requests. (R. p. 249; 917).

Under the Standard Specifications, the Project’s Resident Construction Engineer (“RCE”) possessed extensive rights to exercise control over the Project.¹ According to TSC, it performed construction administration and supervision, at least in part, as RCE Representative. (R. p. 957). (“[I]t is clear that [Marin] Long was a Representative of [sic] RCE.”) Under the Construction

¹ These included the power to: “decide all questions that may arise” regarding Project Contract requirements. (R. p. 973); “suspend the work” (R. p. 973); determine construction requirements (R. p. 973); cause work to be corrected “upon failure to comply immediately with any order of the RCE” (R. p. 973); and accept or reject Work (R. p. 973). These rights are expanded in the Construction Contract to include the right to: receive certain documentation from FCI, including for RCE approval (R. p. 326, 346, 384, 443-44); determine the necessity of certain work (R. p. 353, 360); and direct FCI to perform certain Work (R. p. 443, 448).

Contract, the “RCE Representative has the authority to reject defective material and to suspend any work that is being improperly performed subject to the final decision of the RCE.” (R. p. 974). There is a genuine dispute regarding the existence, scope, and nature of TSC’s RCE or RCE-related authority, no matter the specific label carried by TSC.

TSC’s Petition describes its role as limited to “inspecting and analyzing Flatiron’s work, and reporting finding [sic] the SCDOT.” (Pet. 2). It omits that TSC’s Contract assigned TSC “full responsibility for all project plan and specification reviews including the approval of all information, dimensions, quantities, details and designs involved in the preparation and production of the project plans and specifications.” (R. p. 279). Moreover, in its contract, TSC certified that its work would “meet or exceed the reasonable standard of care of the engineering profession.” (R. p. 279). These provisions, none of which TSC mentions in its Petition, show that TSC’s contractual role extended well beyond passive inspection.

TSC’s Supervisory Authority Over Flatiron

Who exercised day-to-day supervisory authority over Flatiron’s work is the central factual dispute in this case. TSC argues that all meaningful authority resided with SCDOT’s RCE and that TSC’s decisions were merely “temporary and non-binding.” (Petition at 8–9). The record tells a different story and shows that TSC held itself out as the RCE and acted with RCE authority.

From his firsthand experience as a Flatiron Project Engineer and later Project Manager on the Project, in a sworn affidavit Louis Hutcherson testified that TSC’s Martin Long “held himself out as [SCDOT’s] Resident Construction Engineer.” (R. pp. 916–918). Mr. Hutcherson testified that TSC “wielded substantial influence and power over FCI and impacted the progression and completion of FCI’s work on the Project” (R. p. 918); “often made unilateral decisions in the field” without first consulting Horry County or SCDOT (R. p. 918); “repeatedly exercised its right to

reject or stop FCI's work" (R. pp. 918–919); oversaw Flatiron's construction activities (R. p. 917); coordinated and processed pay applications (R. p. 917); and inspected and rejected Flatiron's work (R. p. 918).

Documentary evidence corroborates Mr. Hutcherson's sworn testimony. For instance, a Project organizational chart lists Martin Long as "RCE," with no SCDOT employee holding that title. (R. p. 942). Martin Long signed meeting minutes as "Resident Construction Engineer." (R. pp. 932 & 941). He identified himself as "RCE" in correspondence with SCDOT, the United States Coast Guard, on concrete sample identification cards, and on SCDOT letterhead. (R. pp. 1090, 1093, 1097, 1099). In an email, Martin Long wrote: "I am the RCE for the SCDOT over the Carolina Bays Parkway Project." (R. p. 1099). In 2015, when Martin Long informed Flatiron of an SCDOT stop-work order, SCDOT's Jason Thompson confirmed, but complained that "the stop work call should have been made by the RCE. This type of scenario is what TranSystems has been hired for." (R. p. 943). TSC itself acknowledged below that TSC was a "representative of the SCDOT RCE," and that TSC had "the authority to reject defective material and suspend any work." (R. pp. 957, 974).

Flatiron's Claims

Flatiron filed suit against TSC on April 26, 2018, alleging professional negligence, among other claims. (R. p. 71). Among other actions or failures to act, Flatiron asserts that TSC negatively impacted and/or impeded Flatiron's work by and through: (i) delaying submittal reviews; (ii) excessive submittal revision requests; (iii) differing opinions and arguments amongst TSC field inspectors; (iv) unorthodox and non-industry standard inspection procedures; (v) erroneously interpreting specifications that impacted Flatiron's means and methods; (vi) mandating unreasonable standards beyond industry standard, specified tolerances, and contract requirements;

and (vii) imposing excessive timeframes for critical decision making.² (R. p. 847-854). Flatiron’s complaint was supported by the affidavit of Kenneth J. O’Connell, P.E., a Registered Professional Engineer with over 35 years of experience in construction engineering and inspection services. Mr. O’Connell found that TSC “fell below the standard of care of a civil engineering firm in providing CEI Services and was negligent.” (R. p. 215).

Flatiron pursued its claims against Horry County/SCDOT through a contractual dispute review board (DRB) procedure, leading to settlements in September 2020 and June 2023. (R. p 844 & 1033). Flatiron was not fully compensated for the costs it incurred as a result of TSC’s actions.³

Discovery was Far From Complete at the Time of the Summary Judgment Hearing

TSC’s Petition does not disclose the state of discovery when summary judgment was decided. The parties have long agreed that this case requires depositions of “over twenty (20)” witnesses and involves “multiple companies, various government agencies, and numerous experts.” (R. pp. 132, 134–135). At the time of the summary judgment hearing, no depositions had been taken, and document discovery was ongoing. Indeed, TSC itself had acknowledged it possessed approximately 25,000 unproduced documents responsive to Flatiron’s requests at that time. (R. p. 1043). Two months after the hearing, TSC produced an additional 12,953 documents,

² TSC attempts to characterize Flatiron’s allegations of extensive maladministration as merely complaining that TSC was “too vigorous” or “too diligent” in its supervision and inspection of Flatiron’s work. *See* Pet. 13-14.

³ Notably, the contractor in *Tommy L. Griffin I*, was in a similar posture. In that case, this Court noted: “[t]he County paid [Contractor] for all of the extra costs which County agreed were caused by County, but County refused to compensate [Contractor] for costs incurred by [Contractor] as a result of Engineer’s acts.” 320 S.C. at 52, 463 S.E.2d at 87. That is the case here. TSC’s argument that this Court should dispose of Flatiron’s claims because it can seek redress from Horry County is unfounded and misguided. (Pet. 21-22).

and the parties jointly moved for complex case designation, acknowledging that “more document production remains to be performed.” (R. pp. 146-52).

The Trial Court Order

On November 22, 2023, the trial court issued a Form 4 Order granting partial summary judgment, finding that “TranSystems has established it had no special relationship with Plaintiff and owed no duty of care to Plaintiff.” (R. pp. 14). Flatiron moved to reconsider on December 1, 2023. (R. p. 153). On December 7, 2023, TSC submitted a 25-page proposed order, which the trial court adopted in its entirety, verbatim, on December 27, 2023. (R. pp. 17–67).

The Court of Appeals Decision

The Court of Appeals reversed the trial court’s grant of partial summary judgment in a unanimous unpublished per curiam opinion filed December 10, 2025. Applying the framework established in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995), and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C. 426, 544 S.E.2d 838 (2001), the Court of Appeals held that “further inquiry into the facts is necessary to determine the extent of the parties’ relationship.” (Op. at 1). The appellate court stated that it “must consider all of the facts and circumstances in determining whether a special relationship exists” and that, “[a]lthough we acknowledge it is difficult from precedent to determine the exact facts and circumstances that create a special relationship, we find there was enough evidence presented in this case to establish a genuine issue of material fact as to this issue.” (Op. at 2). TSC’s Petition for Rehearing was denied on January 21, 2026.

ARGUMENT

TSC’s Petition advances two main arguments, neither of which warrant certiorari: (1) TSC is categorically immune from tort liability because its professional relationship with Flatiron

constitutes a conflict of interest (Pet. at 9–14); and (2) courts must confine the special relationship analysis to the contract language (*id.* at 14–17). Both arguments ask this Court to overturn settled precedent or weigh disputed evidence, neither of which is a proper basis for granting certiorari. TSC’s Petition should be denied.

A. TSC’s Petition Should Be Denied Because The Court of Appeals Properly Applied Settled South Carolina Law.

The law governing this dispute is well established. Over thirty years ago in *Tommy L. Griffin I*, this Court held that where there is a “special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty of care will support a tort action.” 320 S.C. at 55, 463 S.E.2d at 88. This Court emphasized that “[t]hese concepts are not new,” *id.* (citing *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989)), and that the decision in *Tommy L. Griffin I* was merely restating “traditional concepts in modern terms.” *Id.*

Applying these concepts to professional liability, this Court expressly found “**no logical reason to insulate design professionals from liability** when the relationship between the design professional and the plaintiff is such that **the design professional owes a professional duty to the plaintiff arising separate and distinct from any contractual duties** between the parties or with third parties.” *Id.* at 55, 384 S.E.2d at 88-89 (citations omitted; emphasis added).

Accordingly, it has long been the law in South Carolina that an engineer who has a special relationship with a contractor owes a duty of care not to negligently design or negligently supervise a contractor’s work, causing the contractor to suffer economic loss. *See id.* at 55-56, 463 S.E.2d at 89. Today, the law remains the same. Contrary to TSC’s attenuated assertions otherwise, the Court of Appeals did nothing more than faithfully apply controlling South Carolina law.

1. Tommy L. Griffin I established that the existence of a special relationship is determined by an analysis of the facts and circumstances of each case.

Under South Carolina law, the duty owed by a professional engineer to a contractor arises where “there is a **special relationship** between the alleged tortfeasor and the injured party not arising in contract.” *Id.* at 55, 463 S.E.2d at 88 (emphasis added). This Court made perfectly clear that “[w]hether such a duty exists will depend on the facts and circumstances of each case.” *Id.* at 55-56, 463 S.E.2d at 89 (emphasis added). This is consistent with general South Carolina law, in which tort duties arising from relationships are expressly distinguished from those created by contract. *See e.g., Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) (“An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.”).

Six years after *Tommy L. Griffin I*, this Court in *Cullum Mechanical Construction, Inc. v. S.C. Baptist Hospital*, 344 S.C. 426, 433, 544 S.E.2d 838, 841 (2001), reversed the trial court’s grant of summary judgment in favor of an architect with certain control over the contractor’s payments, because “**it is a factual issue whether these circumstances give rise to a special relationship** between Architect and Cullum, which would give rise to a duty on the part of the Architect.” (emphasis added). In that circumstance, this Court declared summary judgment inappropriate because “**further inquiry into the facts of the case is desirable to clarify the application of the law.**” *Id.* at 431, 544 S.E.2d at 841 (emphasis added). As such, where, as here, there is a genuine issue of material fact regarding the parties’ relationship, neither TSC nor Flatiron is entitled to summary judgment, and the case is properly remanded for further proceedings. *Cullum*, 344 S.C. at 433, 544 S.E.2d at 842.

2. The Court of Appeals properly applied the facts and circumstances test and summary judgment standard to find a genuine issue of fact material as to whether there existed a special relationship between TSC and Flatiron.

The question before the Court of Appeals was whether the trial court erred in finding, as a matter of law, that TSC had no duty to Flatiron where there were genuine issues of material fact concerning the existence of a special relationship between TSC and Flatiron. The Court of Appeals was not asked to decide the ultimate issue of whether such a special relationship existed, and whether TSC owed of duty to Flatiron, as a matter of law.

The Court of Appeals conducted its *de novo* review of the trial court’s summary judgment ruling by applying the settled framework in *Tommy L. Griffin I* and *Cullum*, and the Rule 56 standard, with precision. It reviewed the record (Op. at 2-4), identified evidence on both sides of the special relationship question (Op. 2-3), viewed that evidence in the light most favorable to Flatiron as the non-moving party (Op. at 2), and concluded that genuine issues of material fact precluded summary judgment (Op. at 3-4). This was a routine application of a well-established legal test to a specific factual record.

The Court of Appeals correctly rejected TSC’s pleas to place a myopic focus on its selective and self-serving interpretation of the Project contracts, to the exclusion of all other competing evidence, including the sworn affidavit of Flatiron’s former project engineer and manager – the only first-hand account of facts as they occurred on the Project. In so doing, the Court of Appeals adhered to South Carolina precedent noting:

Based on *Tommy L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc.* and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, we must consider all of the facts and circumstances in determining whether a special relationship exists. *See Tommy L. Griffin*, 320 S.C. at 55-56, 463 S.E.2d at 89 (“Whether such a duty exists will depend on the facts and circumstances of each case.”); *Cullum*, 344 S.C. at 433, 544 S.E.2d at 842 (explaining “it is a factual issue [as to] whether these circumstances give rise to a special relationship.”). Although we acknowledge it is difficult from precedent to

determine the exact facts and circumstances that create a special relationship, we find there was enough evidence presented in this case to establish a genuine issue of material fact as to this issue.

(Op. at 2 (internal references omitted)). The facts and circumstances that must be considered at the trial court level pursuant to South Carolina precedent include TSC's efforts to distinguish its "CEIT" services from the engineering services at issue in *Tommy L. Griffin*. (Pet. 17-18).

South Carolina law does not recognize the categorical carve-out that TSC sought below and now implores this Court to create. Whether the facts and circumstances specific to TSC's role on the Project are such that no special relationship existed with Flatiron is an issue for the trial court to determine. To find otherwise, as a matter of law, would entirely vitiate the facts and circumstances test. TSC's position would require this Court to subdivide the engineering profession into narrow subcategories and sub-subcategories, including, but far from limited to, design engineers, so-called "CEIT" engineers, construction managers (CM-at risk, CM- not at risk, CM-Agent, CM-Advisor) owner's representatives, and so on. That is precisely what the facts-and-circumstances test was designed to avoid.

As the Court of Appeals recognized, this Court's holding in *Tommy L. Griffin I* was not tied to the design professional's job title or contract labels, but to the authority and control the design professional had over the contractor's work. (Op. at 4 n.5 ("TSC argues that SCDOT did not hold them out as an agent or give them actual authority and therefore it could not have had any authority over Flatiron. However, we agree with Flatiron's argument, which essentially states the key analysis is not whether TSC wielded authority *as* SCDOT RCE; instead, it is whether TSC actually wielded authority." (emphasis in original)). Accordingly, TSC's efforts to label itself as a

“CEIT” engineer are not dispositive. And that label cannot insulate it from potential tort liability if the facts proven at trial demonstrate a special relationship existed between TSC and Flatiron.⁴

The holding below is narrow, based solely on the record in this case, and does not decide the ultimate issue of whether a duty exists. The Court of Appeals held only that “in the light most favorable to Flatiron, we find sufficient evidence was presented to create an issue of fact as to the relationship between the parties, and whether, based on that relationship, TSC owed a duty to Flatiron.” (*Id.* at 2). In its quest to obtain special treatment regardless of the legal standard or subsequent consequences, TSC improperly asks this Court to consider and weigh factual evidence to insulate and immunize TSC from any further legal scrutiny of its control over and conduct towards Flatiron. As the ruling below is consistent with this Court’s precedent, certiorari is not appropriate.

B. There Is No Novel Issue of Law Under Rule 242(B)(1).

TSC’s Petition rests upon a fundamental mischaracterization of what constitutes a “novel question of law” warranting certiorari under SCACR 242(b)(1). What TSC presents is not a legal *question*, but an *argument* for why this Court should overturn decades of settled precedent.

TSC’s conflict-of-interest theory fails at every step. The Rules of Professional Conduct do not bar the duty Flatiron asserts. TSC’s principal foreign authority actually supports the existence of such a duty. TSC also advances an attorney-conflict analogy, which this Court has already used to reach the opposite conclusion. If accepted, TSC’s theory would grant categorical tort immunity not only to so-called “CEIT Services Providers” but to every licensed professional in South

⁴ Flatiron is clear that even if a duty is proven at trial, it must still prove the remaining elements of its negligence claim, namely that TSC negligently breached that duty and that Flatiron suffered damages proximately resulting from the breach. *See Fowler v. Hunter*, 388 S.C. 355, 697 S.E.2d 531 (2010).

Carolina subject to ethical conflict-avoidance rules. The result would functionally abrogate *Tommy L. Griffin I* and this Court’s broader professional liability jurisprudence. Despite having made this argument before the trial court, Court of Appeals, and now this Court, TSC has never explained how this manufactured “conflict of interest” would not have prevented the recognition of a duty in *Tommy L. Griffin I*, *Cullum*, or any number of other decisions of this Court. It does not.⁵

1. TSC’s reliance on *Eastern Steel* is fatally flawed and cannot be relied upon to grant certiorari.

Unable to find support in South Carolina law for its argument, TSC turns to foreign law, as it did before the trial court (R. p. 297-99) and the Court of Appeals (Resp’t Final Br. 23). TSC’s lack of South Carolina authority on this issue is not because there is a novel question of law, but because South Carolina law directly and conclusively contradicts TSC’s position.

Consequently, TSC puts forth *Eastern Steel Constructors, Inc. v. City of Salem*, 549 S.E.2d 266 (W. Va. 2001), for the false proposition that in West Virginia, the existence of a duty is determined by that state’s rules of professional conduct. (Pet. 10-11 (TSC claimed that “the West Virginia Supreme Court stated that whether there is a duty of care may be determined by rules of professional conduct for a profession. The same rule should and must apply in South Carolina...”) (internal citation omitted)). That is neither the law in South Carolina nor the law in West Virginia. TSC’s mischaracterization of foreign law is apparent on the face of the decision by the West Virginia Supreme Court.

⁵ TSC argues for the very first time in its Petition that the Restatement (Second) of Torts § 552 is the “proper test” in this case. (Pet. 18-21). TSC’s argument not only lacks merit as this is not a negligent misrepresentation case, but the issue is not properly preserved for review by this Court. See SCACR 242(d)(1) (“***only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.***”) (emphasis added). This argument must be disregarded in its entirety.

Following a lengthy analysis, during which it cites to *Tommy L. Griffin I* favorably, the court in *Eastern Steel* found that a design professional owed a duty of care to a contractor, “notwithstanding the absence of privity . . . due to the special relationship that exists between the [contractor and design professional].” 549 S.E.2d at 273-275. With regard to whether a special relationship existed, the court primarily focused on the foreseeability of harm that would result from negligence on the part of the design professional. The *Eastern Steel* court **did not** use the professional ethics rules to create or preclude a duty as TSC declares.

Once the court determined that a duty existed under West Virginia law, the court then turned to the separate task of defining the scope of the engineer’s duty. *Id.* at 275 (“[H]aving established that a design professional owes a duty of care to contractors, we endeavor to give some definition to that duty.”). In that context, and for that purpose—not to determine whether a duty exists as TSC represents—the West Virginia Supreme Court noted that “**the duty of care may be further defined** by the rules of professional conduct promulgated by the agencies charged with overseeing the specific profession of which a defendant is a member.”⁶ *Id.* (emphasis added). TSC’s demand that its contortion of foreign law as relying on ethical rules to determine whether a design professional owes a duty to a contract “must apply in South Carolina” is fatal to its own position and should be fatal to its Petition. (Pet. 11).

⁶ This approach is followed in South Carolina when assessing the duty of care for other professions, including lawyers. *See Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 437, 472 S.E.2d 612, 614 (1996) (“the [Rules of Professional Conduct] may be relevant and admissible in assessing the legal duty of an attorney in a malpractice action.”). It is, of course, necessary to define the nature and scope of the duty in order to determine if the duty was **breached** – not to determine whether the duty exists in the first instance.

2. The Rules of Professional Conduct do not preclude the creation of a duty

The South Carolina Rules of Professional Conduct for Engineers and Land Surveyors (the “Rules”) do not preclude the creation of duties to third parties on the basis that such a duty would create a conflict of interest. *See* S.C. Code Regs 49-100 *et seq.* Nor does a duty to exercise reasonable care in supervising a contractor’s work create a “conflict of interest” under the Rules. The conflict of interest provisions establish parameters for managing such relationships ethically. The Rules do not confer immunity from tort liability.

The Rules are “promulgated in accordance with the Code of Laws of South Carolina (1976, as amended), Title 40, Chapter 22” and “delineate specific obligations engineers and surveyors must meet.” S.C. Code Regs. 49-300. The purpose of Title 40, Chapter 22 is, among other things, to “safeguard life, health, and property and to promote the public welfare,” “promote the accountability for engineering practice,” and to “support licensure as the basis of accountability.” S.C. Code Ann. § 40-22-2. The Board has certain powers common to other regulatory boards, including the power to determine eligibility and requirements for licensure, establish a code of professional ethics, and discipline persons licensed “in a manner provided for in this article.” S.C. Code Ann. § 40-1-70 (powers granted to the Board under S.C. Code Ann. § 40-22-70).

The Rules state that the “Engineer or Surveyor shall avoid conflicts of interest.” S.C. Code Regs. 49-304. The term “conflicts of interest” is not defined, but the Rules mandate that engineers disclose any “business association, interest, or circumstances which could influence their judgment or the quality of their service.” *Id.* 49-304(A). These provisions also allow engineers to accept compensation from multiple parties for services on the same project, provided “the circumstances are fully disclosed and agreed to by all interested parties.” *Id.* 49-304(B). This disclosure and consent framework indicates that third-party relationships are permissible rather than categorically

prohibited. Nowhere do the rules purport to have any effect on duties arising elsewhere as a matter of law.

TSC attempts to conflate an engineer's obligation to disclose compensation arrangements from multiple parties on the same project with an alleged immunity from liability for violating legal duties to third parties. No aspect of this tortured analogy holds water. A dual compensation arrangement means the engineer has privity with both entities, which is not the case under a duty to a third party based on a special relationship. TSC is only in privity with Horry County, not Flatiron. TSC is not accepting compensation of any kind from Flatiron. The existence of a special relationship with Flatiron is not regulated or prohibited by the Rules.

TSC's argument would mean that it and every professional with similar obligations in South Carolina could act with impunity toward any party with whom it has a special relationship by creating a conflict of interest. This result is irreconcilable with the Rules' own stated purpose to "safeguard life, health, and property" and to "promote the accountability for engineering practice." S.C. Code § 40-22-2. It would be a perverse reading of rules designed to promote accountability within the engineering profession to conclude that they *immunize* engineers from accountability for professional negligence.

3. Flatiron is not TSC's adversary.

Woven throughout TSC's Petition is the assertion that TSC and Flatiron occupy inherently adversarial positions. (Pet. 5, 9, 13). TSC describes its role as one that "by design ... is adversarial to Flatiron, whose work is being reviewed and criticized." *Id.* at 13. This characterization is factually wrong and legally self-defeating.

TSC's contract required it to "furnish personnel and render professional engineering services for use and benefit of the County." (R. p. 806). Its Scope of Services required it to "ensure

that quality materials are being incorporated into the [P]roject, ensure that quality workmanship is utilized on the [P]roject, ensure that the work of the contractor is progressing in accordance with the proposed schedule.” (R. p. 825). These are quality-assurance obligations that, when performed competently, benefit every project participant, including the owner (who gets its contracted-for project) and the contractor (who meets its contractual obligations), as well as the public at large. There is nothing inherently adversarial about competent professional inspection.

TSC purposefully mischaracterizes Flatiron’s claims as complaints that TSC “was too diligent in performing duties for its clients, Horry County, SCDOT, and the people of South Carolina.” (Pet. 13-14). This is a persistent and calculated distortion of Flatiron’s allegations. In actuality, much like the contractor in *Tommy L. Griffin I*, Flatiron alleges that TSC improperly stopped work, delayed critical submittal reviews, imposed procedures not contemplated by the specifications, rejected work based on erroneous interpretations of the contract documents, and demanded information exceeding contract requirements. (Appellant Final Br. at 30); *see also* 320 S.C. at 51, 463 S.E.2d at 86–87 (contractor alleged the engineer “wrongfully closed the job for nearly a month due to false allegations of OSHA violations, made demands . . . which were not in the contract,” and “erroneously interpreted the contract.”). Simply put, the duty at issue here is a duty of competence, not a restraint on permissible levels of diligence. The nature and scope of that duty, as well as whether TSC breached its duty, are not before this Court and ought to be addressed by the trial court on remand.

Even if TSC’s relationship with Flatiron were adversarial (which it is not), it would not result in immunity from liability. Remarkably, TSC concedes that it wielded substantial professional authority over Flatiron, which it characterizes as its adversary, while claiming total immunity for how it exercised that authority. Under TSC’s theory, the *more* authority a

professional exercises and the more “adversarial” the relationship, the *less* accountable the professional becomes. This is nonsensical and belies this Court’s underlying rationale in *Tommy L. Griffin I* and *Cullum* that, with increased authority and control over the contractor—a special relationship—comes increased responsibility—a duty of care.⁷

4. TSC’s attorney-client analogy fails.

In *Tommy L. Griffin I*, this Court examined established principles of professional tort liability across multiple professions, including attorneys, architects, and accountants, and recognized that a professional duty may, in appropriate circumstances, extend to third parties independent of contractual privity. 320 S.C. at 55-56; 463 S.E.2d at 88-89 (citing *Lloyd v. Walters*, 276 S.C. 223, 277 S.E.2d 888 (1981) (attorneys); *Gilliland v. Elmwood Props.*, 301 S.C. 295, 391 S.E.2d 577 (1990) (architects); *Georganne Apparel v. Todd*, 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1991) (accountants)). Based on that analysis, this Court concluded there was “**no logical reason to insulate design professionals from liability** when the relationship between the design professional and the plaintiff is such that the design professional owes a professional duty to the plaintiff arising separate and distinct from any contractual duties between the parties or with third parties.” *Id.* (emphasis added). TSC now urges this Court to abandon that reasoning by holding that a duty to third parties can never arise due to an alleged conflict of interest. That position would require a fundamental departure from South Carolina’s professional negligence jurisprudence and would extend far beyond this case to shield all professionals subject to conflict-avoidance rules. It presents no novel legal issue and should be rejected.

⁷ If, as TSC suggests, a professional exercising such powers can cause enormous financial harm with impunity, then the Rules of Professional Conduct for Engineers cannot satisfy its purpose to “promote the accountability for engineering practice.” S.C. Code § 40-22-2.

TSC assures this Court that “the engineering professional standard is very similar to that imposed on attorneys, which bars representation of a client if there is a current conflict of interest.” (Pet. at 12). TSC’s argument is based on a layering of two assumptions: first, because of the “importance of the duties assumed by attorneys in representing clients,” and second, that engineers “have similarly important duties not only to clients but to the public at large.” *Id.* No doubt, professionals in South Carolina have important responsibilities that affect their clients and third parties not in privity with them. But TSC’s analogy to attorney-client conflict rules fails because those rules are designed to protect *clients* from their own lawyer’s divided interests. They do not immunize the lawyers from liability to *third parties*. This is evident even in the case law upon which TSC relies.

TSC claims that this Court in *Gonzales v. State*, 419 S.C. 2, 795 S.E.2d 835 (2017) (abrogated on unrelated grounds in *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)), held that “courts presume prejudice to parties where lawyers represent conflicting interests.” This is not true. In *Gonzales*, a criminal case involving ineffective assistance of counsel arising from a conflict of interest, this Court recognized that “the most basic of counsel’s duties” is the duty of loyalty, which is breached when “counsel is burdened by an actual conflict of interest.” *Id.* at 10, 795 S.E. 2d at 839. The presumption of prejudice arises when there is an actual conflict of interest *and* that conflict adversely affected the lawyer’s performance. *Id.* This is an essential distinction. The conflict of interest does not preclude the *existence* of the lawyer’s duty; rather, it concerns the lawyer’s *breach* of that duty.

The *Gonzales* decision defined an “actual conflict of interest” as the lawyer placing “himself in a situation inherently conducive to divided loyalties.” *Id.* (citations omitted). There is no “actual” conflict of interest here as TSC’s relationship with Flatiron is not one in which TSC

owes Flatiron a duty of loyalty. But, even if such a duty existed, TSC would have this Court find that, as a matter of law, TSC's placing itself in this situation means it is immune from liability for its own negligence. That would be an absurd result that is contrary to the opinion in *Gonzales* and the foundational principles of professional liability in South Carolina.

This Court's decision in *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (2011), confirms the point. There, this Court addressed whether ethical rules defining the obligations of lawyers acting as fiduciaries prevented the creation of a duty owed to a third-party beneficiary of an estate. The Court held that "[d]uties owed to a former client are not controlled by the Rules of Professional Conduct" and that the statutory rules regarding obligations of lawyers acting as fiduciaries "do not purport to eliminate all obligations or duties the attorney might have to parties arising from other means." *Id.* at 161–62, 716 S.E.2d at 927. Rules of professional conduct do not, as a matter of law, foreclose duties arising from other sources of law, including from a special relationship. In short, professionals in South Carolina may owe duties to persons beyond their clients. TSC seeks to upend this framework through an overwrought inversion of ethical rules, without legal support.

C. There Is No Conflict With Prior Decisions of This Court Under Rule 242(B)(3).

Seeking any avenue for an audience before this Court, TSC's Petition manufactures out of thin air two arguments to claim that the Court of Appeals' decision conflicts with precedent.

First, TSC seeks to render factual determinations about the relationship between professionals and those to whom they may owe a duty into questions of law that are the exclusive purview of this Court. This would unnaturally expand the obligations of this Court and extinguish controlling precedent. Second, TSC asks this Court to replace any fact and circumstances test with an exclusive evaluation of the Project contracts. TSC's dogmatic reliance on selective contract terms, to the exclusion of the fact and circumstances, directly contradicts the applicable standard

and renders moot TSC's erroneously proffered interpretations of the Project contracts.

1. The Court of Appeals did not hold that duty is a question of fact.

TSC insists that “[w]hether the law recognizes a particular duty is an issue of law to be determined by the court.” (Pet. 14, citing *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996)). This is true, but this was not the question before the Court of Appeals. The legal question of whether a duty exists when a design professional has a special relationship with a contractor is settled law in South Carolina. In short, there is no “question of law” to answer here, as South Carolina has already recognized a duty of care running from a professional engineer to a contractor with a special relationship. The only remaining question on duty, as properly remanded to the trial court, is whether a special relationship existed between TSC and Flatiron that would establish a duty in this particular case. The Court of Appeals held that “the trial court erred in granting summary judgment because there is a genuine issue of material fact as to whether there was a special relationship between the parties such that TSC owed Flatiron a duty.” (Op. at 4). It further found that “inquiry into the facts is necessary to determine the extent of the parties’ relationship.” (*Id.* at 1). The Court of Appeals did not determine the ultimate issue of duty as a matter of law or fact.

2. South Carolina law requires a factual analysis of the relationship between the Parties to determine the nature of their relationship.

The application of a fact-based test to determine an element of an existing duty of care is well established in South Carolina law. For example, the general proposition that a physician may owe a duty of care to his or her patient is a legal principle underlying medical malpractice jurisprudence. See *Fay v. Grand Strand Reg'l Med. Ctr., LLC*, 412 S.C. 185, 194, 771 S.E.2d 639, 644 (Ct. App. 2015) (“[a]lthough the court must determine whether the law recognizes a duty, [t]he existence of a physician-patient relationship is a question of fact for the jury.”) (quoting

Fuller v. Blanchard, 358 S.C. 536, 546, 595 S.E.2d 831, 836 (Ct. App. 2004)). In other words, whether a particular doctor established a specifically recognized relationship with a particular patient is a question of fact that determines the applicability of a recognized duty at law. See *Roberts v. Hunter*, 310 S.C. 364, 366, 426 S.E.2d 797, 799 (1993) (“The establishment of a doctor/patient relationship is a prerequisite to a claim of medical malpractice.”). This structure is indistinguishable from that adopted by *Tommy L. Griffin I*, affirmed in *Cullum*, and applied by the Court of Appeals here.

Adopting TSC’s argument would be akin to altering medical malpractice jurisprudence to require a finding of legal duty between each individual doctor and patient. It would represent a wholesale departure from South Carolina law, requiring that every component and element of determining the existence of a duty in any particular case be a question of law. Such a test would be equally unwieldy and legally unsound in the realm of engineers and contractors. Trial courts and juries are well-positioned as finders of fact to consider and weigh evidence of the nature of particular relationships within the classes of duties established by law.

3. TSC’s conduct, not its contract, determines the existence of a special relationship.

TSC assumes from the start that the facts and circumstances test directed on remand by the Court of Appeals should be limited to the strict interpretation of contract language. This presumption is wrong and finds no support in South Carolina law. TSC confidently states that “[t]he analysis of the relationships among Horry County, SCDOT, TranSystems and Flatiron must begin and end with the contracts which establish these relationships.” (Pet. 15 (emphasis added)). Not so. TSC’s bold assertion not only lacks any cited authority but also directly contradicts controlling precedent.

Tommy L. Griffin I established that the duty owed by a professional engineer to a contractor arises where “there is a special relationship between the alleged tortfeasor and the injured party not arising in contract.” 320 S.C. at 55, 463 S.E.2d at 88 (emphasis added). Critical to that factual inquiry into whether a special relationship exists regarding the duty owed by professional engineers to contractors is *post-contracting* conduct. For example, in *Tommy L. Griffin I*, this Court recognized the materiality of the contractor’s complaints that the engineer “wrongfully closed the job for nearly a month due to false allegations of OSHA violations, Engineer made demands of [Contractor] which were not in the contract, Engineer wrote a disparaging letter to [Contractor’s] bonding company, Engineer erroneously interpreted the contract to the [Owner] and [Contractor].” 320 S.C. at 51, 463 S.E.2d at 86-87. The recognition of this intrinsically post-contract conduct reveals the flaws at the core of TSC’s contract-based argument.

TSC advocates for a regime under which a supervising professional engineer could not be held legally responsible, effectively immunized from tort liability, for taking actions outside the scope of the applicable contract, regardless of the harm to the contractor. And yet, the *Tommy L. Griffin I* court did not endorse this approach because tort law concerns itself with tortious conduct, not the terms of the contract.⁸ As the Court of Appeals succinctly and correctly stated, “the key

⁸ TSC’s contract-centric argument is undermined by its own foreign authority, *Eastern Steel*, which found an engineer owed a contractor a duty under West Virginia law without relying on the project contracts. 549 S.E.2d at 271–75 (citing *Tommy L. Griffin I* favorably). Recognizing further limited utility of contract terms, the court noted:

We note that the exact nature of the specific duty owed by a design professional may be impacted by provisions contained in the various contracts entered into among the parties (e.g. the contract between the owner and the design professional, and the contract between the owner and the contractor), **provided that such contractual provisions do not conflict with the law.**

549 S.E.2d at 275 (italics in original; bold underscored emphasis added). As *Eastern Steel* recognizes, contracts may inform the scope of an existing duty but cannot override the law

analysis is not whether TSC wielded authority as SCDOT RCE; instead, it is whether TSC actually wielded authority.” (Op. at 7 n.5 (emphasis added)). TSC’s narrow (and substantively incorrect) focus on the scope of its contractual obligations to the exclusion of its actual conduct towards Flatiron simply misses the mark.

CONCLUSION

The Court of Appeals faithfully applied this Court’s controlling precedent in *Tommy L. Griffin I* and *Cullum* to find that genuine issues of material fact preclude summary judgment on the question of whether a special relationship exists between TSC and Flatiron. That holding is narrow: it is based on the record in this case, it does not decide whether a duty ultimately exists, and it is memorialized in an unpublished opinion with no precedential value. There is no novel issue of law to address, only TSC’s argument that ethical regulations should override this Court’s common law and established precedent. There is no conflict with existing law, only TSC’s invitation to replace the established facts-and-circumstances test with a contract-only analysis this Court has never endorsed. TSC’s Petition, at its core, asks this Court to grant a professional engineering firm categorical immunity from tort liability to a contractor over whose work the firm exercised substantial authority. This Court in *Tommy L. Griffin I* rejected that request in 1995. The Court of Appeals in this case correctly declined to accept it in 2025. This Court should deny certiorari and allow the trial court to conduct the factual inquiry that *Tommy L. Griffin I* requires.

or foreclose tort duties. TSC likewise cannot contract around South Carolina law or rely solely on contract terms to obtain immunity.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

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Mar 20 2026

SC Court of Appeals

On Petition for Writ of Certiorari from the Court of Appeals of South Carolina
Unpublished Opinion No. 2025-UP-416 (S.C. Ct. App. Filed Dec. 10, 2025)

TranSystems Corporation,

Petitioner,

v.

Flatiron Constructors, Inc.,

Respondent.

PROOF OF SERVICE

I certify that on this date, March 20, 2026, I filed the Respondent's Return to the Petition for Writ of Certiorari, with the Supreme Court of South Carolina and South Carolina Court of Appeals via electronic filing and served a copy on Petitioner via e-mail, addressed as listed below:

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